ADMIRALTY—COLLISIONS—DEFENSE OF COMPULSORY PILOTAGE.—The steamers Gothland and Alexander Shukoff collided in the Thames on Dec. 4, 1916. Both vessels were in charge of compulsory pilots. It appeared that the Gothland was at fault, but her owners put in the defense of compulsory pilotage. Evidence was offered to show that the captain and crew of the Gothland had not rendered the pilot the proper assistance by keeping a sharp lookout and giving the pilot warning of the proximity of the Shukoff. *Held,* that the defence of compulsory pilotage was not available, since the master and crew of the vessel had not rendered proper assistance to the pilot, and this neglect contributed to the collision. *The Alexander Shukoff v. The Gothland* [1921, H. L.] A. C. 216.

Most seaports require the taking of a licensed pilot on entering and leaving port. N. Y. Laws 1882, ch. 410, sec. 2119; The Pilotage Act, 1913, sec. 11. If the only penalty for failure to take a pilot is the payment of the fee, the pilotage is not considered compulsory. *Homer Ramsdell Trans. Co. v Cie. Gén. Transatlantique* (1901) 182 U. S. 406, 21 Sup. Ct. 831; *The Dallington* [1903, Adm.] P. 77. When in charge of a vessel the pilot exercises most of the functions of the master of the vessel. Abbott, *Merchant Ships and Seamen* (14th ed. 1901) 301; Hughes, *Admiralty* (2d ed. 1920) 36. A pilot is not an insurer of the safety of the vessel, but is under a duty to the owners to exercise the reasonable skill and diligence of an expert and may be held liable for any damages the owner may have to pay. *Guy v. Donald* (1907, C. C. A. 4th) 157 Fed. 527, 14 L. R. A. (N. S.) 1114, note. Pilot associations have been held liable for the negligence of a pilot furnished by them. *The Thielbek* (1917, C. C. A. 9th) 241 Fed. 209; but see Marsden, *Collisions at Sea* (7th ed. 1919) 108 (English rule). According to the rule long followed in England it was a good defense to an action for damages for a collision that the vessel was in the charge of a compulsory pilot, the theory being that no man should be held liable for the acts of a servant whom he has no choice in employing. *The Maria* (1839, Adm.) 1 W. Rob. 95; *The Halley* (1867, P. C.) L. R. 2 A. C. 193, 201. This exemption from liability has been recognized by statute in England. 52 Geo. III., c. 39, sec. 30 (1812); Merchant Shipping Act, 1894, sec. 633. When a pilot takes charge of a vessel the master is not relieved from all liability. He must see that the pilot's orders are obeyed and that a good lookout is kept. Abbott, *op. cit.,* 302. And if the master and the crew are to blame for any act or omission that contributes to the accident the owners are liable. *The Velasquez* (1867, P. C.) L. R. 1 A. C. 494; *The Tactician* [1907, Adm.] p. 244. The master is placed in the peculiar position that he must not offer too much assistance or interfere under penalty of forfeiting the defense. Abbott, *op. cit.,* 303, 304. The defense of compulsory pilotage has not been allowed in the United States. *The China* (1868, U. S.) 7 Wall. 53; *Indra-Line v. Palmetto Phosphate Co.* (1916, C. C. A. 4th) 239 Fed. 94; cf. *Homer-Ramsdell Transportation Co. v. Cie. Gén. Transatlantique, supra.* The theory of the American cases is that the vessel herself is liable to a lien according to the maritime law and that the doctrines of common-law agency do not apply. The English rule has been recently changed by statute. The Pilotage Act, 1913, sec. 15. The statute did not apply in the instant case as it did not take effect until January 1, 1918. The rule adopted by the statute, which corresponds to the American rule, would seem to work out the most uniform and satisfactory results.

BILLS AND NOTES—INDORSEMENT BY MISTAKEN HOLDER OF THE SAME NAME.—S. & Co. drew a check payable to H. E. Richards, intending to mail the same to its client by that name in Oklahoma. By mistake the check was sent to a former client of the same name in Texas, who cashed it at a Texas bank, which, in turn, discounted it with the defendant bank. The defendant bank collected payment from the drawee bank. The plaintiff drawer now sues as assignee of the

true payee for conversion. *Held,* that the plaintiff cannot recover. *Slattery & Co. v. National City Bank* (1920, N. Y. Mun. Ct.) 64 N. Y. L. J., Dec. 22, 1920, No. 68.

It is a general rule that no title to a negotiable instrument passes by a forged indorsement and that the bank or person making the payment does so at its peril. N. I. L. sec. 23; *Munroe v. Stanley* (1915) 220 Mass. 438, 107 N. E. 1012. The cases in which the indorsement has been made by a person of the same name as the true payee, into whose hands the check has fallen, must be distinguished from the impostor cases, since in the latter type the mistake as to identity is on the part of the drawer, while in the former the mistake as to identity originates with the party who purchases or pays the instrument on the spurious indorsement. See *Harmon v. Old Detroit National Bank* (1908) 153 Mich. 73, 116 N. W. 617; 17 L. R. A. (N. S.) 514, note. The indorsement of a check or draft by one who is not the payee or indorsee but who bears the same name is clearly a forgery if he knows that he is not the person intended. *Russell v. First National Bank* (1911) 2 Ala. App. 342, 56 So. 868; *Beattie v. National Bank* (1898) 174 Ill. 571, 51 N. E. 602. A drawer nevertheless cannot recover from the drawee who has paid a check sent by the drawer to a payee of the same name as the true payee, because as between two innocent parties the one causing the injury must suffer. *Weisberger v. Barberton Savings Bank* (1911) 84 Ohio St. 21, 95 N. E. 379. Nor will a recovery be allowed against a savings bank where its depositor requested that a draft payable in Germany be sent to him there for the amount of his deposits, and where such draft was received and indorsed by and paid to a party of the same name by the drawee, the bank having a rule that deposits will be paid only over its counter. *Jung v. Second Ward Bank* (1882) 55 Wis. 364, 13 N. W. 235. But it has been held that the drawee bank may recover against the indorsee of the false payee immediately upon discovering that there has been a forgery. *Third National Bank v. Merchants Bank* (1894, Sup. Ct.) 76 Hun, 475, 27 N. Y. Supp. 1070; *Beattie v. National Bank, supra.* And where the true payee sued an indorsee of a person having the same name as the payee, the court allowed a recovery by the plaintiff, and likewise where the assignee of the true payee brought suit against the drawee bank which had paid a draft to a bona fide purchaser from a person having the same name as the payee. *Indiana National Bank v. Hottsclaw* (1884) 98 Ind. 85; *Graves v. American Exchange Bank* (1858) 17 N. Y. 205. Where the owner of a bond delivered it merely for safekeeping to a bailee of identically the same name, an indorsement and delivery of the bond by the bailee to the plaintiff for value was inoperative against the owner. *People's Trust Co. v. Smith* (1915) 215 N. Y. 488, 109 N. E. 561. Where the payee of a draft sued the indorsee of a person having the same name as the payee, a state of facts similar to the instant case in all respects except that the true payee was suing instead of his assignee, the court permitted the plaintiff to recover. *Thomas v. First National Bank* (1912) 101 Miss. 500, 58 So. 478. In view of what has been said above it would seem that upon authority the principal case is not sound.

CARRIERS—BILLS OF LADING—DELIVERY OF GOODS WITHOUT SURRENDER OF BILL OF LADING.—The plaintiff shipped a carload of potatoes to Louisville, Ky., by the defendant railroad on an "order notify" bill of lading. The bill of lading, endorsed in bank by the plaintiff consignor, was attached to a draft, discounted at the plaintiff's bank, and forwarded to the vendee's bank, which wrongfully delivered it to the vendee without receiving payment of the draft. An agent of the vendee, having the bill in his possession, telephoned the defendant's agent at Louisville to deliver the car to the Southern Railroad to be taken to Dumesnil, Ky., which it did without demanding surrender of the bill. The potatoes, being unsatisfactory, were rejected at the latter place and the bill of lading was